

Devon
County Council

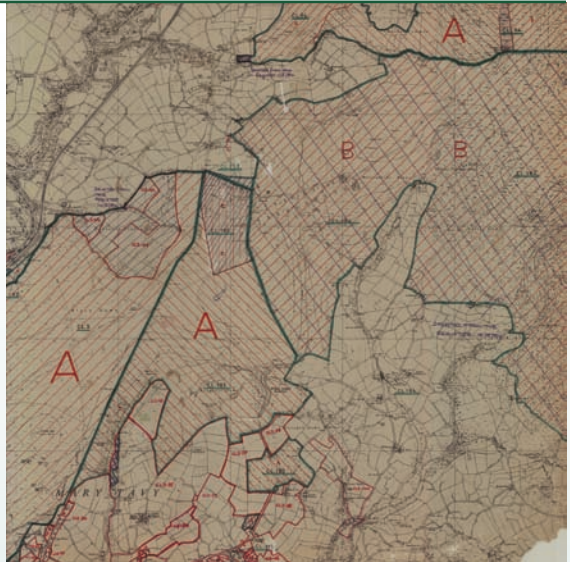


An Introduction to
The Commons Act 2006



Commons Act 2006

Devon County Council is the Commons Registration Authority for Devon, which means that we maintain the Registers of Common Land and Town and Village Greens. Devon County Council holds both a written register containing details of ownership, a description of the land registered and any rights of common exercisable over the land, and register maps which show the land included in the Common. The registers were drawn up in the late 1960s, and in some respects, are now out-of-date.



In Devon, there are 215 areas of Common Land registered, and 60 cancelled Commons. We also have 105 Town and Village Greens registered, and 26 cancelled Town and Village Greens.

Can I view the Commons Registers?

Yes, anyone can view the registers free of charge at County Hall in Exeter. Please call us in Land Charges first to make sure that someone will be available to assist you if necessary (please see back page for our contact details). We can provide copies of the registers if required, and you can request these in writing, by email or over the phone. Please note that there will be a fee for this service.

How does the Commons Act 2006 affect the Commons Registers?

The Commons Act 2006 brings new responsibilities for Devon County Council, and also for Commoners' Associations and Councils, owners of Common Land, and those using Common Land for whatever reason, as

show the land to have been wrongly registered under the Commons Registration Act 1965. You can also apply to deregister common land or greens where the land was built upon at the time of its original registration, and remains built upon at the time your application is decided. You must apply by December 2020.



You can also apply now under section 16 of the Act to deregister common land to allow development to take place if (in most cases) you give replacement land in exchange and the overall application is in the public interest. Generally, however, the Act provides new safeguards for common land against deregistration, so as to ensure its long term protection.

What is wrongly registered land?

The registers of common land and town or village green were first prepared under the Commons Registration Act 1965 and continue to be maintained by Commons Registration Authorities (generally county and unitary councils). In some cases the original applications to register land included maps that either were difficult to interpret or incorrectly defined the boundary of the land. Consequently some land registered under the 1965 Act was wrongly registered as common land or town or village green. Paragraphs 6 to 9 of Schedule 2 to the Commons Act 2006 enable you to apply to the commons registration authority to deregister certain types of land and buildings that were wrongly registered as either common land or town or village green.

Can I register land as common land?

You may be able to apply to register land as common land if its registration under the Commons Registration Act 1965 was cancelled by the Commons Commissioner in certain circumstances, or if the land is recognised as common land under a statutory scheme of management or local Act.

Can I register rights of common?

You cannot now register rights of common which should have been registered under the Commons Registration Act 1965: those rights were extinguished in 1970. But you must register any new rights of common which you have acquired since 1970 during the one year transitional application period (this ends in September 2009), or they will be extinguished.

I've sold my rights: do I need to do anything?

If you sold your land with rights of common attached, then you do not need to do anything: the rights remain attached to the land. But if you severed the rights from the land, surrendered or varied them, at any time since 1970, you must make sure that you apply to update the register during the one year transitional application period (this ends in September 2009), unless you applied to amend the register at the time.

Deregistration of buildings

You may be able to apply under paragraphs 6 or 8 of Schedule 2 to the 2006 Act to deregister land which is and has been covered by a building or the curtilage of a building ever since the land was registered under the 1965 Act. Typically, such land may include cottages or gardens on or abutting the common or green. It does not matter whether the building or curtilage was lawfully present on the land when the land was provisionally registered under the 1965 Act. Neither is it necessary that the land has been covered by the same building throughout the period since the date of provisional registration — it would be sufficient, for example, that the land had at the date of registration been covered by a garage adjacent to a house, but the garage had subsequently been demolished and the land became part of the garden of that house. The

full criteria for deregistration (set out in paragraph 6(2) and 8(2) of Schedule 2 to the 2006 Act) are:

the land was provisionally registered as common land or green under section 4 of the 1965 Act;

on the date of the provisional registration, the land was covered by a building or was within the curtilage of a building;

the provisional registration became final;

since the provisional registration, the land has at all times been, and still is, covered by a building or within the curtilage of a building.

Corrections to the registers

In some cases inaccurate information was recorded in the Commons Registers, and section 19 of the 2006 Act enables applications to be made by any person to correct some types of errors in the registers. This will help the registers to become a more accurate record of registered land and rights of common, so ensuring that common land can be better protected and fulfil its potential.

What errors can be corrected?

You can apply under section 19 to correct any error in the register which was made by the registration authority, and to correct some other types of error which do not increase or reduce the area of land registered as common land or green and do not affect the quantification of a right of common: see below for details. The registration authority will not grant your application unless it considers it fair to amend the register, having regard to the effect which the amendment will have on other people with an interest in the registration.

Mistakes made by the registration authority

You can apply to correct any mistake previously made by the registration authority when making or amending an entry in the register. For example, if an error was made by the authority when mapping the boundary of a common during the provisional registration of common land, or if, in amending an entry in the register, the authority erroneously added a zero to the number of rights registered, increasing the number of rights tenfold.

Duplicate entries

You can apply to remove a duplicate entry in the register. Duplicate entries sometimes happened where application was originally made for provisional registration of a right of common under the 1965 Act, by both



the tenant of a farm entitled to exercise the right, and the landlord of the farm, and no objection was made to either registration so that they both became final.

Other mistakes not affecting land or quantification of rights

You can apply to correct any other mistake in the register provided that the amendment would not affect the extent of land registered as common land or town or village green, nor the quantification of any right of common. For example, you can apply to correct the identification of the farm or holding to which a right of common is registered as being attached, or to correct a mistake in the identification of the land over which a right of common is exercisable (so that the right should be exercisable over the whole of a register unit, rather than a particular part).

Updating names and addresses

You can apply to update any name or address shown in the register:

generally, this will be one which relates to the registered owner of a right of common held in gross. You cannot apply to update the details of a name or address entered against a right of common attached to land in column 3 of the rights section of the register, because those details record the person who applied for registration of the right, and not to any successor in title.

Accretion or diluvion

You can apply to update an entry in the register to take account of the common law principles of accretion and diluvion, which apply to all land where the boundary of ownership follows a body of water. The principle is that if, by gradual and hardly noticeable accretions in the ordinary course of nature, land is added on one side, that land falls into the ownership of the person owning the rest of the land on the same side, and the boundary line correspondingly advances. Diluvion is the reverse (where land is eroded on the other side). If the land affected is also subject to rights of common, then the rights of the commoners will adjust along with the rights of the owners.

Is there a fee for applications under Section 19?

There may be a fee for an application under section 19 but if you contact us we will be able to tell you more. You will need to provide evidence showing how the mistake or error was originally made.

Registration of 'new events'

You can apply to amend the commons registers to create, vary, amend, transfer or extinguish a right of common, or to register new land as common land or as a town or village green. Any changes take effect only when the registration is made or amended (in the past, changes affecting rights of common or registered land had effect whether or not the commons registers were updated).

Creation of new rights of new common land

You can apply under section 6 to create and register a new right of common either over existing registered common land or over unregistered land (resulting in the land becoming common land). You can apply only if

you are the owner of the land over which the right will be exercisable (the common land) or the land to which the right will be attached. Any new right of common must be 'attached to land' (so that it will be exercisable by the owner of that land).

Variation of existing rights of common

You can apply under section 7 to vary an existing right of common so that it becomes exercisable over new land (in replacement for or in addition to the existing common land), or is otherwise varied (for example, in terms of the type of stock which may be grazed). You can apply only if you are the owner of the land over which the right to be varied is currently exercised or over which the right once varied is or will become exercisable, or if you are the owner of the land to which the right of common is attached or of the right of common held in gross.

Apportionment of rights of common

You can apply under section 8 to apportion a right of common to reflect a change in ownership of part of the land to which a right of common is attached. For example, if a farm has a right to graze 30 sheep but the farm is subsequently divided into three equally-sized lots, each owner of one lot will be entitled to a one-third share of the rights. The original right of common shown in the register can be apportioned on application to show the entitlement belonging to the owner of each lot.

Attaching a right in gross to land

You can apply under section 10 to attach to land (such as a farm holding) a right of common that you hold in gross (*i.e.* as a 'personal' possession), so that in future, the right will be exercisable by the owner of that land. You can apply only if you are the owner of the right of common in gross.

Re-allocating an attached right

You can apply under section 11 to re-allocate a right of common attached to land where part of the land has been or will be put to non-agricultural use. For example, you can apply where part of the land to which the right is attached has been acquired for development (such as a new road) by compulsory purchase. You can apply only if you are the owner of the land to which the right of common is attached.

Transfer of a right of common held in gross

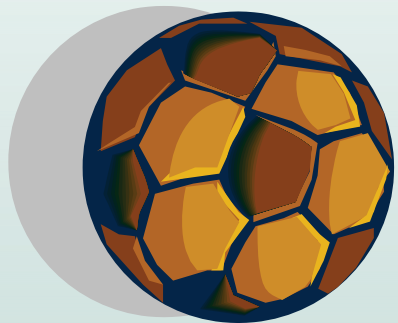
You can apply under section 12 to transfer a right of common held in gross between persons. You can apply only if you are the registered owner of the right or the person to whom it will be transferred.

Extinguishment of a right of common

You can apply under section 13 to extinguish a right of common. You can apply only if you own the land to which the right is attached or hold the right of common in gross, or if you own any part of the land over which the right is exercisable.

Statutory dispositions

Applications can be made under section 14 to amend the commons registers because of a statutory disposition which has a consequential effect on the registers. This most often happens where common land, greens or rights of common are acquired compulsorily, sometimes with other land being given in exchange. There is a duty, generally on the compulsory purchase authority, to apply to the registration authority to amend the commons registers. So you cannot generally apply under section 14 (unless the duty falls on you), but it may be helpful to draw the registration authority's attention to any statutory disposition which has not been registered under section 14.

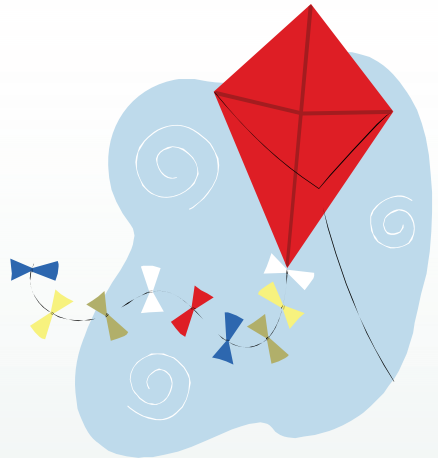


Town and Village Greens

Town and village greens originate in customary law, where long-standing recreational use of land by the local inhabitants came to be recognised and protected by the courts. Greens are areas of land where local people have for many years indulged in lawful sports and pastimes, which might include organised or informal games, picnics, fêtes, dog walking and similar activities. A green can be in private ownership but many greens are owned or maintained by town and parish Councils.

How can new greens be registered?

Under section 15 of the Commons Act 2006, land can be now registered as a green if it has been used by local people for recreation 'as of right' (*i.e.* without permission, force or secrecy) for at least 20 years.



How can I apply?

If you wish to apply to register land as Town or Village Green, you will need to provide evidence of the nature and extent of use of the land sufficient to satisfy the registration criteria. Please contact us for more information or see our website (see back for details).

Who can apply to register land as Town or Village Green?

Anyone can apply to have land registered as a green if it meets the criteria. In addition, under section 15(8), the owner of land may voluntarily apply to register that land as a green for use by local people (without any need to show previous use of the land for sports and pastimes). However, if the land is leased for more than a seven-year term, or subject to a charge (or mortgage), then the consent of the leaseholder or charge holder must first be obtained.

When can I apply under the new provisions?

You should apply as soon as possible, and in any event within two years of any challenge to use of the land 'as of right' (for example, if the owner of the land puts up a fence around the land). As a transitional provision, you may be able to apply within five years of the date of any challenge which took place before 6 April 2007. The owner of the land may apply voluntarily (under section 15(8)) at any time.

Contact Us

If you would like to know more about the Commons Act 2006, a range of fact sheets are available on our website, along with a list of applications and fees. These can be found at www.devon.gov.uk/commonland

If you would like to contact us to discuss any particular issues, or to arrange to view or obtain copies of the registers, then you can write to us at:

**Land Charges (CA/BOOK), Room G15, Devon County Council,
County Hall, Topsham Road, Exeter, Devon EX2 4QD**

We also have a telephone dedicated to commons and town and village green enquiries:

(01392) 382937 - please quote reference CA/BOOK

Or you can email us: commons@devon.gov.uk (Quote ref CA/BOOK)

